

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) No. 4:09-CR-679-HEA
)
)
KATHERINE A. MOCK,)
ELAIN KAY YOUNG,)
)
Defendants.)

JURY TRIAL
VOLUME 5

BEFORE THE HONORABLE HENRY E. AUTREY
UNITED STATES DISTRICT JUDGE

MARCH 16, 2012

APPEARANCES:

For Plaintiff Michael A. Reilly, AUSA
 Patrick T. Judge, Sr., AUSA
 Thomas E. Dittmeier, AUSA
 OFFICE OF U.S. ATTORNEY

For Defendant Christopher E. McGraugh, Esq.
Katherine A. Mock LERITZ PLUNKERT & BRUNING P.C.

Kevin Curran, AFPD
OFFICE OF U.S. PUBLIC DEFENDER

For Defendant Jennifer Herndon, Esq.
Elain Kay Young Michael J. Gorla, Esq.

REPORTED BY:
Gayle D. Madden, CSR, RDR, CRR
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102
(314) 244-7987

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1 (Proceedings started at 9:37 a.m.)

2 (The following proceedings were held in open court and
3 with the Defendants present.)

4 (The following proceedings were held within the hearing
5 and presence of the Jury.)

6 THE COURT: Morning all.

7 MR. GORLA: Good morning, Judge.

8 MR. DITTMAYER: Good morning, Judge.

9 THE COURT: Ready to proceed?

10 MR. DITTMAYER: Yes, Your Honor.

11 THE COURT: Call your next witness.

12 MR. DITTMAYER: Nicholas Berry.

13 THE COURT: You may proceed.

14 **NICHOLAS D. BERRY,**

15 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
16 FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. DITTMAYER:

19 Q Would you state your name for the Jury, please?

20 A Yes. It's Nicholas D. Berry.

21 Q And what's your occupation or profession?

22 A I'm a Sergeant with the Missouri State Highway Patrol.

23 Q And how long have you been with the patrol?

24 A About 17 and a half years.

25 Q And you were so employed on March 17th, 2008?

1 A Yes, sir, I was.

2 Q Were you contacted that day by criminal investigators of
3 the Highway Patrol to assist them?

4 A Yes, I was.

5 Q Okay. And what were you to assist them in?

6 A With the execution of an arrest warrant.

7 Q And what was that warrant for?

8 A It was for murder.

9 Q Okay. And was your assistance needed to effect the
10 arrest of Kay Young?

11 A Yes.

12 Q Now, did you have information -- about what time did you
13 effect that arrest that afternoon?

14 A About 6:15 in the evening.

15 Q Was it Kay Young?

16 A Yes, sir.

17 Q And did you have information that she was heading home?

18 A Yes, I did.

19 Q Were criminal investigators up at her house at that time?

20 A Yes, they were.

21 Q And where did you station yourself?

22 A I was on Highway O, just a little outside of Novinger,
23 just down from the soon to be arrestee's residence.

24 Q Okay. And could you see her home from your vantage
25 point?

1 A Yes. Her home is up on a hill. I could.

2 Q Okay. And was there -- there was a reason a decision was
3 made to effect the arrest on the road?

4 A Yes, sir.

5 Q And what was that?

6 A Mainly just officer safety issues, just to --

7 Q Okay. Now, when you stopped Ms. Young, were you looking
8 for a particular truck or --

9 A Yes, yes. I had a description.

10 Q And what were you watching for?

11 A A white three-quarter-ton pickup, an F250.

12 Q And did you see Ms. Young?

13 A Yes, I did.

14 Q And what did you see when you saw -- what did you do when
15 you saw her?

16 A Turned on my lights, the emergency lights, activated
17 those, and effected a traffic stop.

18 Q Okay. And she pulled right over?

19 A Yes, sir.

20 Q Okay. Now, in your patrol cars, are they equipped with,
21 like, video recorders?

22 A Yes, they are.

23 Q And was the arrest on videotape?

24 A Yes, it was.

25 Q Was that video subsequently retrieved?

1 A Yes.

2 Q And have you had occasion to review it?

3 A I have, sir.

4 Q Okay. Now, let me -- let me show you what's been
5 previously marked as Government's Exhibit 40 and 40A. Would
6 you look at Government's Exhibit 40 and tell the Court and the
7 Jury whether you've seen that before?

8 A Yes, sir, I have seen it before.

9 Q And what is that?

10 A It is a -- a copy of the arrest video that was taken by
11 the in-car video of my patrol car.

12 Q And that's a true and accurate representation?

13 A Yes, sir.

14 Q And when you listened to this video and reviewed it,
15 is -- is there audio on it?

16 A Yes, there is.

17 Q Okay. Does the audio -- is the audio on from the
18 beginning of the video, or is there something that kicks the
19 audio on?

20 A There's a -- there's about 30 seconds, approximately 30
21 seconds, where there's no audio. There's a prerecord, so when
22 it's first turned on, the system is turned on, it shows you
23 what happened 30 seconds before it was turned on.

24 Q Okay.

25 A The same thing happens at the end.

1 Q Okay. I now want to show you Government's Exhibit 40A.

2 Do you recognize that?

3 A Yes, sir.

4 Q And is that a transcript of the audio on the video?

5 A Yes, sir, it is.

6 Q And you reviewed that?

7 A I did.

8 Q And that's a true and accurate representation of what's
9 on the video?

10 A Yes, it is.

11 MR. DITTMER: At this time, Your Honor, I would
12 offer Government's Exhibit 40 into evidence.

13 THE COURT: Any objection?

14 MR. DITTMER: And I --

15 MR. CURRAN: No objection.

16 MS. HERNDON: No.

17 THE COURT: Admitted.

18 MR. DITTMER: And I would also offer Government's
19 Exhibit 40A into evidence for the record, not to publish to
20 the Jury, simply that we have it as part of the record.

21 THE COURT: Very well. Any objection?

22 MR. CURRAN: No objection, Judge.

23 THE COURT: 40A will likewise be admitted.

24 MR. DITTMER: I'd ask leave to play the video,
25 Judge.

1 THE COURT: Very well.

2 (Video played.)

3 Q (By Mr. Dittmeier) Now, Officer, the Exhibit 40, the
4 video we just watched, that was a true and accurate
5 representation of what took place?

6 A Yes, sir, it was.

7 Q Okay. And when you pulled Ms. Young over and went up and
8 talked to her about the -- the warrant for her murder, she
9 indicated she had no idea what murder you were talking about?

10 A Yes, that is correct.

11 Q And at some point in there, did she say, "Murder of who?"

12 A Yes, that's exactly what she said.

13 Q Okay. Now, there was some reference to an individual in
14 there by the name of Darrell that was going to come down to
15 get the truck?

16 A Yes, sir.

17 Q Okay. And who was -- was that Darrell Hamilton?

18 A I believe that's the name. At the time, I knew it was
19 Darrell. It was a person who had been reported to be living
20 at Ms. Young's address.

21 Q Okay. Somebody who was living with her?

22 A Yes, that was what I was told.

23 Q And was the truck subsequently turned over to him?

24 A Later, after -- after my departure.

25 Q Okay.

1 A But that was the plan.

2 Q Okay. Now, did you have occasion to check the inside of
3 the truck before you turned it back to Darrell?

4 A Yes, sir.

5 Q And could you tell the Jury what you did?

6 A Just kind of looked for anyplace where a large item could
7 be. I wound up -- eventually wound up dumping her purse over,
8 just to make sure there was nothing that shouldn't be there.

9 Q Because that was going to be turned back?

10 A Yes, yes.

11 Q And when you dumped the purse over, did anything come to
12 your attention?

13 A Yes, sir.

14 Q And what was that?

15 A There was a stack of personal papers. There was also a
16 small spiral notebook, and they were all kind of bound
17 together with a rubberband that was maybe twisted two or three
18 times.

19 Q Okay. And did you see some language there that you
20 thought you should draw --

21 MS. HERNDON: Your Honor, I'm going to object. Can
22 we approach?

23 THE COURT: You may.

24 MR. DITTMAYER: I'm not asking him to go into the
25 language.

1 MS. HERNDON: Well, I --

2 MR. DITTMIEIER: Oh, okay.

3 MS. HERNDON: -- think I still need to approach.

4 MR. DITTMIEIER: Oh, okay. All right.

5 THE COURT: All right.

6 (A bench conference was held on the record and outside of
7 the hearing of the Jury as follows:)

8 THE COURT: I assume this is regarding your previous
9 objection?

10 MS. HERNDON: Yeah, and I don't know why I feel like
11 I should object right now to any further mention of this just
12 based on our motion to suppress. I'm not sure exactly where
13 he's going with it, but I would just object to any further
14 reference to it based on the motion to suppress it and keep it
15 out of evidence even if he isn't introducing it.

16 THE COURT: Mr. Dittmeier.

17 MR. DITTMIEIER: Judge, I was just going to ask him if
18 he -- if he seized this packet of stuff and turned it over to
19 investigators. I wasn't going to ask him anything further,
20 and I wasn't going to introduce it.

21 THE COURT: All right. Very well.

22 MS. HERNDON: Okay.

23 MR. CURRAN: I should give you the heads-up. We're
24 planning on -- I'm going to make a little more record with
25 him, but when we get to -- the only thing we do in our case --

1 we're going to plan to move for the admission of at least that
2 top paper. It may bear discussion later.

3 THE COURT: Okay.

4 MR. CURRAN: I'm not going to get into the contents.
5 I'm going to have it marked. I'm going to have to have it
6 marked, but I can't move for its admission in our case, I
7 don't think.

8 THE COURT: All right.

9 MR. CURRAN: I just wanted to let you know. We may
10 want to talk about it later, but --

11 THE COURT: Okay.

12 MR. CURRAN: So I'm going to have some questions, but
13 I'm not going to get into the contents.

14 THE COURT: All right.

15 MS. HERNDON: You're going to wait and recall him
16 or --

17 MR. CURRAN: No. I'll have him identify it, right,
18 and mark it.

19 MS. HERNDON: Oh, okay.

20 MR. CURRAN: Okay.

21 MS. HERNDON: Yeah, you're going to do that now --

22 MR. CURRAN: Yes.

23 MS. HERNDON: -- is what you're saying? Okay.

24 MR. CURRAN: We'll do it on cross.

25 MR. DITTMAYER: But if we're talking procedurally

1 here then, I mean, rather than have him mark it, I'm not going
2 to introduce this. Okay. If the defense wants to introduce
3 it and wants to mark it as an exhibit, I'm not sure they can
4 do that on our case, but in the interest of efficiency, I am
5 not going to object to that. If we've got him on the stand,
6 we may as well hash out what he's going to do.

7 MS. HERNDON: Yeah. Well, no, I agree. I mean I
8 would object to him doing it, but I won't object to him being
9 procedurally wrong.

10 THE COURT: Okay. All right. Good deal. And then
11 we'll cross that bridge when we actually get to it.

12 MS. HERNDON: Okay.

13 MR. CURRAN: Okay. I'm not going to be laying the
14 foundation. I'll have it marked as a defense exhibit but not
15 move for its admission until it's our case. That's what I was
16 thinking.

17 THE COURT: I got you.

18 (The following proceedings were held within the hearing
19 of the Jury.)

20 THE COURT: Proceed.

21 Q (By Mr. Dittmeier) Now, Officer, I believe you said that
22 these papers that had the rubberband around them, there was
23 something there that drew your attention?

24 A Yes, sir.

25 Q And what did you do with that? Who'd you turn that over

1 to?

13

2 A I brought it to the attention of Sergeant Troy Linneman,
3 one of our criminal investigators.

4 Q Okay. All right. And then they seized it?

5 A Yes, sir.

6 Q Okay. After that, did you put the items back in the
7 purse and leave it in the truck?

8 A I think I left them just sitting right where they were
9 right on the seat.

10 Q Okay. Did you find anything else that drew your
11 attention in the inside of the vehicle?

12 A Yes, sir.

13 Q And what was that?

14 A In the upper right portion of the pickup truck, there was
15 a black case, and inside the case, there was a -- what I would
16 have to describe as a stun gun, an electronic-controlled type
17 of weapon.

18 Q Did you have any reason to seize that?

19 A No, sir, I did not.

20 Q Was that left with the vehicle when it was turned back to
21 Darrell Hamilton?

22 A As far as I know, it was, sir.

23 MR. DITTMAYER: Okay. I have no further questions of
24 this witness.

25 THE COURT: Cross, Mr. Curran.

1 MR. CURRAN: Thanks, Judge.

2 CROSS-EXAMINATION

3 BY MR. CURRAN:

4 Q Trooper Berry, you were -- you were in that area because
5 they anticipated at some point Ms. Young would be driving by,
6 is that fair to say?

7 A Yes, sir.

8 Q Okay. And then you knew what vehicle she'd be in, is
9 that correct?

10 A Yes.

11 Q You had a license plate number and all of that?

12 A Yes, that's correct.

13 Q Okay. And it happened as planned; the vehicle goes by;
14 you recognized it, right?

15 A Yes, sir.

16 Q And then you recognized her in it?

17 A Yes, sir.

18 Q Okay. So then what -- and then -- I think we just saw on
19 the tape, once the vehicle is curbed, she's the only passenger
20 there, is that right?

21 A She's the only person, yes.

22 Q I'm sorry. She's the driver. Yeah, she's the only
23 person in the truck?

24 A She's the only occupant, yes, sir.

25 Q Yeah, okay. And -- and I think you said that once she's

1 secured, once she's cuffed and taken away, then it's normal
2 procedure to check inside the cab to make sure there's no
3 contraband or weapons or anything, is that fair to say?

4 A Yes, sir.

5 Q Okay. And that's one of the reasons you were checking
6 the purse, just to make sure -- well, one of the reasons is to
7 make sure there's no weapons?

8 A Yes, sir.

9 Q Okay. And that's just standard procedure for an arrest?

10 A Correct.

11 Q Okay. Now, that was the only purse in the cab?

12 A Yes.

13 Q Okay. And it's your understanding that was her purse?

14 A Umm, I don't know if I had an understanding, sir.

15 Q Okay.

16 A She was driving, and there was a purse.

17 Q Okay. All right. But there are other -- okay. And then
18 what was the plan to do with the purse? You were going to
19 give it back to Darrell, or were you going to keep it, have it
20 go with her?

21 A My understanding was that the truck and its contents were
22 going to be released to Darrell.

23 Q Okay. All right. And you didn't want anything being
24 released that was contraband?

25 A Correct.

1 Q Okay. Now, you said there was -- when you were looking
2 in the purse for the weapon, something else caught your eye,
3 is that right?

4 A Yes, sir.

5 Q All right. Now, I don't want you to tell us what the
6 contents were. I just want to see if you can identify it, all
7 right?

8 A Okay.

9 MR. CURRAN: Okay. I'm going to mark this exhibit as
10 Defendant's Exhibit D, but I'm going to mark it on the
11 envelope rather than on the exhibit itself, just to let the
12 Court know.

13 THE COURT: All right.

14 Q (By Mr. Curran) Did you -- after you seized this item
15 we're talking about, which I'm calling Defendant's Exhibit D
16 and I'm going to show you in a minute, are you the one that
17 packaged it, or did somebody else? Do you remember?

18 A Sir, I didn't actually seize it. I located it --

19 Q All right.

20 A -- and --

21 Q And then you turned it over to one of the others, the
22 detectives maybe?

23 A Sergeant Linneman or then Corporal Wilhoit probably is
24 the one that packaged it.

25 Q Okay. So just to have the sequence right, you were

1 looking in the purse for possible contraband, right?

2 A I actually dumped, just dumped --

3 Q Dumped it out?

4 A -- the purse over on the seat.

5 Q Okay. And that -- and that was the reason, to look
6 for -- to see if there was anything in there that shouldn't
7 be, is that right?

8 A Yes, sir.

9 Q Okay. And then this exhibit caught your eye?

10 A That's correct.

11 MR. CURRAN: Okay. I want to approach. May I
12 approach, Judge? Sorry.

13 THE COURT: Of course.

14 Q (By Mr. Curran) Now, I don't want you to get into what
15 the writings are or the contents, but do you recognize what
16 I've just showed you?

17 A Yes, sir.

18 Q All right. And is that -- the top page that you're
19 looking at now, is that what caught your eye?

20 A Yes, it is.

21 Q All right. And that's what led you to direct either
22 Linneman or one of the other officers there because it might
23 be something of interest to them, is that fair to say?

24 A That is correct, sir.

25 Q Okay. And is that how -- I notice there's a spiral

1 notebook and then also there's some papers and it's all
2 rubberbanded; is that in the condition in which you saw it?

3 A It's fairly -- I mean the rubberband was maybe in a
4 little different position, but the spiral notebook was on the
5 bottom, and this was the top page.

6 Q Okay.

7 A I can't confirm what might be in between, but --

8 Q Okay. And then you said when you dumped the purse out,
9 that caught your eye?

10 A Yes, sir.

11 Q Okay. All right. I'm just taking it back. All right.
12 Just so I'm clear, this is what came out of the purse -- what
13 we just looked at?

14 A Yes, sir.

15 MR. CURRAN: Defendant's Exhibit D. All right.

16 No further questions. Thank you.

MS. HERNDON: I don't have any questions. Thank you.

18 MR. DITTMEIER: Judge, I have just one question.

19 THE COURT: Yes, sir.

20 | REDIRECT EXAMINATION

21 BY MR. DITTMAYER:

22 Q Officer, you identified that what Mr. Curran showed you
23 is what came out of the purse. Actually, this pack of papers
24 you described that's wrapped with the rubberband, you
25 recognized some of the language on that loose first sheet

1 | that's there, is that correct?

19

2 | A Yes, sir.

3 Q Okay. And as far as the other things and the notebook
4 looking similar, you can't really vouch that any -- all the
5 other stuff -- that this is the exact stuff that was in there,
6 I guess?

7 | A Correct. It looks --

8 Q You didn't go through it?

9 A I did not go through it.

10 Q Basically, all you saw was like rubberband around this
11 and the language on --

12 A On the top page, sir, yes.

13 MR. DITTMAYER: I have no further questions, Judge.

14 THE COURT: All right. Anything else, Mr. Curran?

15 | RECROSS-EXAMINATION

16 BY MR. CURRAN:

17 Q I just want to make sure I'm clear. I think I'm probably
18 asking you the same question. The top note is what you saw,
19 right?

20 A Yes, sir.

21 Q And you didn't -- and I think you just said you didn't
22 thumb through and look at any of the other documents?

23 A No, sir.

24 Q Okay. Generally, it generally looks like what you
25 seized, is that right?

1 A Other than the placement of the rubberband might be a
2 little different, but yes.

3 Q Okay. All right. And then you did get a chance to look
4 at the note again when I just gave it to you?

5 A Yes, sir.

6 Q Okay. And that's the note that you remember?

7 A Yes, it is.

8 MR. CURRAN: Okay. Thank you.

9 MS. HERNDON: No. Thank you, Judge.

10 THE COURT: All right. Thank you, sir.

11 THE WITNESS: Thanks.

12 THE COURT: You're free to go.

13 Call your next witness.

14 MR. DITTMAYER: Judge, at this time, the Government
15 is prepared to rest its case with the caveat that we would
16 like the opportunity with the Court and defense lawyers to go
17 through all the exhibits to make sure that the exhibits have
18 been admitted.

19 THE COURT: All right. Very well. Sidebar.

20 (A bench conference was held on the record and outside of
21 the hearing of the Jury as follows:)

22 MS. HERNDON: Can we go now?

23 THE COURT: Huh?

24 MS. HERNDON: Can we go now?

25 THE COURT: Can I go now? Umm, do you want to take

1 up the motions now, or do you want to take a little recess for
2 the Jury and do the logistics of the motion and the exhibits?

3 MR. GORLA: That probably makes sense.

4 MS. HERNDON: Yeah.

5 THE COURT: Do you want to do that?

6 MS. HERNDON: Yeah, let's do that because, yeah, we
7 don't want to let them sit there while we go through all that.

8 THE COURT: All right.

9 MR. DITTMIEIER: Do you have your witnesses here yet?

10 MR. GORLA: I'm going to go out there and see.

11 MR. DITTMIEIER: Well, I know you said they're coming
12 about 11:00.

13 MR. GORLA: 10:30.

14 MR. DITTMIEIER: Okay.

15 MR. GORLA: So by the time we do all this, they'll
16 probably be here.

17 THE COURT: Okay. All right.

18 (The following proceedings were held within the hearing
19 of the Jury.)

20 THE COURT: Ladies and gentlemen, the Government
21 having announced that they've rested, we'll take a brief
22 temporary recess at this time. During the course of the
23 recess, do not discuss the case amongst yourselves or with
24 anyone else. Do not allow anyone to discuss it within your
25 hearing or presence. Do not form or express any opinions

1 about the case until it is given to you to decide, and
2 certainly, again, do not utilize any social networking sites
3 during the course of the recess. Temporary recess, Carrie.

4 (The following proceedings were held outside the hearing
5 and presence of the Jury.)

6 THE COURT: You may be seated. Motions.

7 MR. MCGRAUGH: Judge, we would move for, with leave
8 of court to file a written motion, a motion for a directed
9 verdict at the close of the Government's case. The specifics
10 of the -- of the argument, I would leave to Mr. Gorla as we
11 will, obviously, join in the same, same motion.

12 THE COURT: Very well.

13 MR. MCGRAUGH: Oh, we don't need leave, Judge. We've
14 got a motion right here.

15 THE COURT: Okay. Mr. Gorla.

16 MR. GORLA: Yes, Your Honor. Judge, we would also
17 move for judgment of acquittal at the close of the
18 Government's case on both counts of the indictment. Ask leave
19 to file a written motion later with the Court electronically.

20 THE COURT: Very well.

21 MR. GORLA: Judge, I'd just like to say with respect
22 to Count I of the indictment, the conspiracy charge, if you
23 put these statements of Keri Ponder and Thomas Ponder to the
24 side, there's no evidence of a conspiracy. There's no proof
25 that there was an agreement between the Defendants to commit

1 the offense. What the Government is trying to do is they're
2 trying to use the statements which -- of Thomas Ponder -- the
3 statements that Kathy -- the testimony of Thomas Ponder and
4 the testimony of Keri Ponder as to the statements of Kathy
5 Mock and trying to use those statements to bootstrap them into
6 proof of the conspiracy, and the -- the law is clear, the
7 evidentiary rule is clear that while statements of
8 coconspirators can be considered, they can't make the
9 conspiracy just based upon the statements, and that's what we
10 have as to Count I.

As to Count II, the murder-for-hire charge, what the Government has to show in the murder-for-hire charge is they would have to show that there was either payment going from one Defendant to the other or a promise to pay going from one Defendant to the other to commit the homicide. At best, at best, they have an expectation that there would be some payment in the future. The expectation of pecuniary gain in the future is not covered by the statute. There's a case out of the Tenth Circuit, *United States versus Wicklund*, W-I-C-K-L-U-N-D. I believe the cite is 114 F.3d 151, and the case is very, very appropriate, and in that particular case, there was a planned homicide, and they were going to be paid in the future, and there wasn't a direct promise, and there wasn't direct -- there wasn't any payment, and there wasn't any promise to pay, okay, upfront, and what the court did is

1 the court had to interpret the murder-for-hire statute, and
2 the issue was whether the provision that says "consideration
3 for a promise or agreement to pay anything of pecuniary value"
4 covered the expectation of pecuniary gain, and what the court
5 did is it compared the language in § 1958 to the language in
6 the death penalty statute, the one where they talk about the
7 pecuniary gain aggravator, and in the death penalty statute,
8 the pecuniary gain aggravator does include expectation of
9 pecuniary gain in the future. This statute does not, and what
10 the Tenth Circuit said was that, obviously, Congress, if they
11 wanted to put expectation of pecuniary gain in the
12 murder-for-hire statute, they could because they've done it in
13 the other statute, in the death penalty aggravator statute,
14 and they didn't do it, and they basically said then that it
15 doesn't apply and that, you know, the murder-for-hire scenario
16 under the statute is you have to pay now or a promise or an
17 agreement upfront to pay in the future but not the fact that,
18 you know, hey, you know, you're going to expect to be paid
19 because there's going to be some -- in this case, there's
20 going to be some insurance money that's going to come and
21 you're going to be paid out of that in the future, and that's
22 at best what we have here on the murder-for-hire charge,
23 Judge, and there's just not sufficient evidence to support,
24 you know, the submission of that case to the Jury.

25 THE COURT: Mr. McGraugh.

1 MR. MCGRAUGH: Your Honor, I would just join in
2 Mr. Gorla's argument, but I would also point out that given in
3 the most favorable light, the evidence in the most favorable
4 light to the Government, I don't believe there's sufficient
5 evidence for a conspiracy to commit murder in the first degree
6 because even the Government's own evidence is that no one
7 accepted an agreement, no agreement was formed that there'd be
8 a murder-for-hire, and -- and I also believe, Your Honor,
9 there's insufficient evidence that the actual murder of
10 Mr. Griesbauer was for hire as there's been no evidence that
11 anything of pecuniary gain passed between either Ms. Mock or
12 Ms. Young. Those are the two addendums I would add to
13 Mr. Gorla's argument.

14 MR. GORLA: Judge, I would join in Mr. McGraugh's
15 argument as well.

16 | THE COURT: Very well. Mr. Dittmeier.

17 MR. DITTMEIER: Well, Judge, the Court's listened to
18 all the evidence, and from the evidence, I believe it's
19 obvious that there in fact was a conspiracy here. The
20 statements of the Defendants can be considered as finding the
21 conspiracy, but prior to the statements, you've got both
22 Defendants at the scene of the body; you've got both
23 Defendants telling a story that is lockstep that they now try
24 and avoid, but it's a lockstep story. The gun used in the
25 murder is Kay Young's, and Kathy Mock is up there with her DNA

1 in the gloves with gun residue, and she has the ski mask.
2 That's without any statements to anybody. Then when you build
3 off of that, you have Kathy Mock soliciting people to do the
4 murder, and if the state recalls, there was a lady that
5 testified in this case, Amanda Bax, who said that Kay Young
6 told her that the murder was for insurance and that she had
7 Kathy Mock trying to get people to do the murder, and it's one
8 step further that Kathy Mock is telling them that they are
9 going to get paid for the murder. So I'd submit to the Court
10 that there's overwhelming evidence of a conspiracy here.

As far as the case that Mr. Gorla cited, as far as
somebody doing a murder and expecting something -- "I'll do
the murder because this is a nice, generous guy" -- I don't
know if that's the way that case read. I'm not familiar with
it, but I do know not long ago this Court tried a case where
there was an offer of a vehicle to do a murder, an old
vehicle, and it was a murder-for-hire, and it was affirmed by
the Eighth Circuit court, and the statute clearly says a
promise or an agreement to pay, and we've got Kathy Mock here
passing on, offering to pay people money. The evidence is
clear she has no money. We have Kay Young going to collect
the insurance, and I would say clearly there's an offer to
pay. She tells Jean Ballard she's going to come into some
money just shortly before the murder, so I'd submit to the
Court that we've met every element and that we've also met the

1 element of the promise or agreement to pay money.

2 THE COURT: Thank you. Response, if any.

3 MR. GORLA: Just briefly, Judge. You know, I think
4 Mr. McGraugh has previously addressed Count I, and again, the
5 murder-for-hire charged in Count II -- I think at best -- and
6 I think Mr. Dittmeier -- what Mr. Dittmeier just said kind of
7 goes along to prove this, is you had an expectation of payment
8 in the future at best. You know, you don't have any evidence
9 of any promise to pay now. You don't have any evidence of
10 payment now. You've got someone's testimony at best that
11 expects to be paid in the future, expects to come into some
12 money in the future. It's an expectation of pecuniary gain in
13 the future. It's insufficient to prove an offense under the
14 murder-for-hire statute, and it's totally different than the
15 conspiracy statute. They actually have to prove each and all
16 the elements of the murder-for-hire. Obviously, as you know,
17 in the conspiracy statute, you know, you don't even have to
18 prove a murder was committed, but for a murder-for-hire, I
19 mean, you do, and that's -- that's the problem that they have.
20 Judge, if you'd like, I've got an extra copy of the case --

21 THE COURT: Please.

22 MR. GORLA: -- if it please the Court. I'll give a
23 copy to the other side as well.

24 THE COURT: Thank you, Ms. Carrie. Anything further?

25 MR. DITTMER: I have nothing further, Judge.

1 THE COURT: All right. As to Defendant Young's and
2 Defendant Mock's motion for judgment of acquittal at the
3 conclusion of the Government's case, on the arguments
4 presented by counsel in support of the motion and the
5 arguments presented by the Government in opposition to the
6 motion, it is clear to the Court that on the evidence adduced
7 that there is abundant evidence in support of the conspiracy
8 independent of any statements that were made. The statements
9 as far as the evidence is concerned are statements that, in
10 effect, put the icing on the cake as far as conspiracy. There
11 is independent -- sufficient independent evidence on the part
12 of the conduct of the Defendants individually as well as
13 collectively with regard to the conspiracy, and, of course,
14 the additional statements by Ponder, testimony by Ponder and
15 Bax sufficiently establish a conspiracy.

16 As to the murder itself, there is no doubt based upon
17 the evidence that a murder was committed. Accident has been
18 excluded. Suicide has been excluded. The only thing left is
19 whether there was a homicide or a murder. The evidence has
20 clearly established that in relation to the location of the
21 wound, the nature of the weapon used to perpetrate the
22 offense, the sudden death of the victim, which excludes the
23 possibility of suicide, combined with certain items that were
24 found at or near the scene, which would be a ski mask and
25 gloves, as Mr. Dittmeier indicated, bearing the unique DNA of

1 Defendant Mock as well as stippling on the face in the area of
2 the wound by the victim. Defendant's motions on the evidence
3 thus far adduced -- and the Court concluding that the
4 Government has established a *prima facie* case for submission
5 to the Jury -- are overruled individually and collectively.
6 Having overruled the Defendants' motion for judgment of
7 acquittal by Young and by Mock, are we ready to proceed? Are
8 you guys going to present any evidence, Mr. McGraugh or
9 Mr. Gorla?

10 MR. MCGRAUGH: Yes, Your Honor. The -- we -- we, on
11 behalf of Ms. Mock, don't intend to call any witnesses. We
12 had Officer Berry under subpoena. He would have been our
13 witness to introduce -- and our only piece of evidence we wish
14 to introduce is the note which Officer Berry identified at --
15 at the time of the arrest, and so I don't know if -- if anyone
16 is going to have any issue with the introduction of the top
17 note there, but that's what we intend to do, and we might as
18 well get that out of the way now if anyone does.

19 THE COURT: Ms. Herndon?

20 MS. HERNDON: Well, yeah, yeah, we object to it,
21 obviously, based on our prior motions, Your Honor.

22 THE COURT: Mr. Dittmeier, have you got anything in
23 this?

24 MR. DITTMIEIER: Judge, I can't identify the note or
25 whatever is why I didn't put it in, but I have no specific

1 objection. I don't know. Are you objecting to it?

2 MS. HERNDON: Yes.

3 MR. DITTMER: Oh, okay.

4 THE COURT: Yes, go ahead, Mr. McGraugh.

5 MR. MCGRAUGH: Judge, as I understand it,
6 Mr. Dittmeier has no objection to it, although with the caveat
7 we did not intend -- there's a -- there's a back side of this
8 note, which was not identified by -- by --

9 THE COURT: Berry?

10 MR. MCGRAUGH: -- Officer Berry. So we wouldn't
11 intend to put the back side of the note. Just the front side
12 of the note is what he identified. And as to the -- as to
13 Defendant Young's objection, that objection, a motion to
14 suppress, only goes to the Government's obtaining of the
15 evidence by a constitutional violation. It doesn't restrict
16 us.

17 MS. HERNDON: Well, I guess I would argue against
18 that if I thought you were going to over -- you were going to
19 change your ruling, but, umm, yeah, I mean the only -- the
20 only problem that I guess that I have with it, Judge, in
21 addition to the motion to suppress, is it's not in her
22 handwriting, and it's clearly not in her -- the portion that
23 Mr. McGraugh wants in is clearly not in her handwriting as
24 evidenced by the stuff that we've seen introduced through the
25 insurance documents that are her handwriting, and so it's just

1 out there. It's just this thing floating out there for
2 anybody to argue anything about since there's no connection
3 between this and actually being something that she was aware
4 of or knew about or wrote. Clearly, she didn't. I think
5 it's -- I think it's -- the probative value of it is,
6 therefore, outweighed -- the prejudicial effect outweighs the
7 probative value of it because of that, because it's so -- it's
8 just such an unknown. It was in a big bag or purse or
9 whatever that was in her truck. I'll give them that, but
10 especially because it's not in her handwriting, it's -- I mean
11 there's no evidence to tie her to it. There's no evidence
12 that she knew it was there. There's no evidence about who
13 wrote it. There's no evidence about anything, and because of
14 that, I think it's just too out there to be relevant because
15 of the circumstances that nobody -- you know, nobody can
16 identify it or authenticate it or anything else. It just
17 leaves too much up to speculation.

18 MR. MCGRAUGH: Can I address that, Your Honor?

19 THE COURT: Uh-huh.

20 MR. MCGRAUGH: Ms. Herndon's argument is an
21 authenticity argument, and that's under the Rule 901, and if
22 the Court refers to the Federal Rules of Evidence 901, the --
23 the requirement for authentication or identification is a
24 condition precedent to admissibility is satisfied by evidence
25 sufficient to support a finding that the matter in question is

1 what the proponent claims, and -- and -- and number four,
2 subparagraph four of that, is the distinctive characteristics
3 and the like, and it further says appearance, contents,
4 substance, internal patterns, and other distinctive
5 characteristics taken into conjunction with the circumstances.
6 That rule has been interpreted by a number of cases. *U.S.*
7 *versus Reyes*, 798 F.2d 380. It's a Tenth Circuit case, 1986.
8 It relates to a notebook which was found amongst a series of
9 drug conspirators, and in that case, the Tenth Circuit says,
10 "The notes were seized from Reyes' residence. The source of
11 the notes and the correspondence of information contained in
12 the notes to members of the conspiracy provided ample
13 foundation for their admissibility. Moreover, the contents of
14 the notes indicated that they were written by someone involved
15 in the conspiracy."

16 Now, in this, this note directly says, "Use her
17 drugged state to convince her she shot him." Now, we already
18 have evidence in this case that Kay Young had supplied Kathy
19 Mock with a bagful of Vicodin. Further, the note says,
20 "Offered 10,000 to kill him. Was turned down." Again, the
21 information contained on the note directly corroborates the
22 evidence that this Court has heard.

23 I would also refer to *U.S. versus Banks*, which is an
24 Eighth Circuit case, 514 F.3d 769. This has to do with
25 evidence retrieved from trash, from the -- from a

1 defendant's -- I'm sorry. This has to do with an ATF
2 application filled out as an alias of the defendant, and
3 again, the Eighth Circuit interpreting Rule -- the rule found
4 it admissible.

5 *U.S. versus Baker* -- this is the case, Judge, where
6 trash was found outside the defendant's house and the items in
7 the trash, based on the Rule 901, was admitted into evidence.

8 As far as whether she wrote it or didn't write it,
9 that's something that the -- the -- the Defendant Young can
10 argue. It goes to possible weight but not the admissibility
11 of it. They're free to contest it in any manner that they'd
12 like to as far as whether it's in her hand or not.

13 MS. HERNDON: Well, doesn't --

14 THE COURT: So with that in mind, Ms. Herndon,
15 does --

16 MS. HERNDON: I mean I don't have --

17 THE COURT: -- does that mean that you're a
18 handwriting expert now?

19 MS. HERNDON: Well, you know what, Judge? I think
20 that my seven-year-old could tell that this is not her
21 handwriting. I don't think you have to be an expert. It's
22 just so different than what her handwriting is, but I mean
23 even -- and I don't -- that just makes it all the worse to me.
24 I think the problem is none of Mr. McGraugh's cases show how
25 this note should be admissible in this case. There's nothing

1 out there that's similar. He didn't even talk about the last
2 two, but there's nothing out there that's similar to what's
3 going on here. The main problem is just nobody can tie it up.
4 Nobody can make any connection to it is the main problem as we
5 just don't -- you know, everybody is -- this comes in and
6 everybody is just free to argue anything they want, and
7 that's -- about -- about who wrote this or what it means.
8 It's not -- I mean it's a confusing note. It really doesn't
9 make sense. Open to any interpretation.

10 THE COURT: Well, for the record, let's specifically
11 identify the note in terms of what it says, so that it's clear
12 what we're talking about here.

13 MS. HERNDON: Okay. The handwritten portion on the
14 lines say, "Use her drugged state to convince her she shot
15 him. Offered 10,000 to kill him. Was turned down. If I
16 collaborate her story. Bucks. Sheriff here 3:30 p.m." And
17 then on the top of the note, there's writing that says, "Cindy
18 in with marijuana. Has jail and inmates convinced. Openly
19 discussing," and it says 3-13 of '06.

20 Do you want to look at it?

21 THE COURT: Yes.

22 MS. HERNDON: You do?

23 THE COURT: Uh-huh.

24 MR. MCGRAUGH: Judge, I think you're looking at the
25 back side of the note, and that's not what we're --

1 MS. HERNDON: Oh, sorry. Turn it around.

2 THE COURT: Oh, I know. I only have to decide on the
3 facts, so I get to see some of the more interesting things.

4 MR. MCGRAUGH: Judge, could I just respond? What I
5 think Ms. Herndon said was that anyone could tell that -- her
6 seventh grader or seven-year-old child. Well, she's free to
7 argue that, Judge. You know, she's free to make that argument
8 to the Jury, "Compare this to the other writings you've seen
9 and" -- but that goes to weight. That doesn't go to
10 admissibility. Admissibility has got it by 901, and if the
11 characteristics in that note confirm the authenticity of it --
12 the distinctive characteristics -- and it clearly does by the
13 evidence you've heard in this case -- it's admissible.

14 THE COURT: You sure you want this in?

15 MR. MCGRAUGH: Yep.

16 THE COURT: Positive?

17 MR. MCGRAUGH: I am.

18 MS. HERNDON: Judge, if I may, I think the other
19 thing worth noting about the note is that if we look at how it
20 was recovered with this notebook and it was rubberbanded on
21 top of that -- and it's clearly -- it seems -- appears to me
22 to be a photocopy of something, which I think further -- I
23 mean this is all original papers and stuff, and that looks
24 like a photocopy of something, which I think further questions
25 what it is or where it came from or its relevance.

1 THE COURT: I don't know what this is, Chris.

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2 MR. MCGRAUGH: What's that, Judge?

3 THE COURT: I don't know what this is.

4 MR. MCGRAUGH: Well, Judge, what we do know what it
5 is is we know it was taken from the Defendant at the time she
6 was arrested.

7 THE COURT: Uh-huh.

8 MR. MCGRAUGH: The officer saw it on top, realized
9 its importance given the facts of this case, and provided it
10 to the Missouri State Highway Patrol for evidence. That's all
11 I think you need to know, and why it's relevant is that it was
12 in the Defendant's possession and it was -- it's obviously
13 relevant to issues in this case.

14 THE COURT: How?

15 MR. MCGRAUGH: Well, Judge, for two reasons. One, it
16 showed use her drugged condition to believe she shot him.
17 It's -- my contention from my opening statement, Judge, is
18 that the Vicodin was supplied to Kathy Mock to give -- to --
19 to keep her in a drugged condition so that she believed that
20 she committed the murder when in fact she did not. So it's
21 directly on point to that issue, Judge. It explains the
22 pills. It explains -- it also, Judge, is corroborated by the
23 other evidence about \$10,000. I mean, you know, that -- and
24 that it was turned down. I think that that's directly
25 relevant to the issues in this case.

1 THE COURT: Well, okay, but what is it?

2 MR. MCGRAUGH: It's a note in the Defendant's
3 possession.

4 THE COURT: Okay. Which is -- I mean, effectively,
5 what you want to do is use this as a piece of testimony.

6 MR. MCGRAUGH: Well, Judge, I want to use --

7 THE COURT: Effectively, that's what you want to do.
8 You want to use this --

9 MR. MCGRAUGH: I want to use it, Judge --

10 THE COURT: -- as a piece of testimony from what --
11 actually, it's kind of like the secret witness because we
12 don't know where it came from; we don't know who wrote it. We
13 do know -- we know from Sergeant Berry's testimony that it was
14 in the Defendant's purse with those other papers.

15 MR. MCGRAUGH: We do know where it comes from.

16 THE COURT: And I guess the extrapolation from that
17 or the conclusion from that, your argument would be from the
18 other cases that you cite, is that it would be admissible
19 because it's something that was in her possession. Whether it
20 was in her possession as something she created or drafted is
21 another issue.

22 MR. MCGRAUGH: It wouldn't matter, Judge. If she
23 was -- if she asked someone to write it for her --

24 THE COURT: Uh-huh.

25 MR. MCGRAUGH: -- what would it matter? What matters

1 is that it was in her possession. That's what's -- that's
2 what's relevant about it. It's relevant, though, to in her
3 possession and that -- what it -- you know, who wrote it or
4 who created it is not at issue. At issue is -- and that goes
5 to -- the authenticity of it. Authenticity is -- the
6 admissibility based on authenticity is that the
7 characteristics of it -- and the characteristics of it
8 certainly are relevant in this case. And, again, Judge if you
9 look at those cases, I mean they're taking -- they're taking
10 evidence out of people's trash cans, and, again, that's
11 sufficient enough --

12 THE COURT: In determining whether this comes in, how
13 do I separate this from what's on the back of it? And, again,
14 it does appear that at some --

15 (Thunderclap.)

16 THE COURT: That might be a sign. It does appear
17 that this is a photocopy of something. You know, with the
18 stuff on the back, there's also a question of whether it's a
19 photocopy of one sheet that contains things because, as I
20 said, the things that are on the back, which are these little
21 letters and words that are cut out and pasted -- it's kind of
22 like the *Creepy Crawler* movie -- is of greater interest
23 because on the back of it, in these letters that are cut out
24 or words that are cut out, you know, "Your husband said no to
25 her and she murdered. She asked many to kill for Rita. I

1 her. Her and family trying to kill you from cell." You know,
2 this is creepy stuff. "Deeply concerned. You and I family.
3 She's evil. No remorse. She crazy." So is this all part of
4 this, too? And, you know, if -- if it's relevant because it
5 was in her purse, all right, is the whole thing relevant
6 because it was in her purse? Can one conclude that reasonably
7 the stuff on the back -- that this is something that --
8 whether the handwriting can be identified as her handwriting
9 by Ms. Herndon or anybody else, can one reasonably conclude
10 that this is something that the Defendant may have written or
11 drafted because it was in her purse? You know?

12 MR. MCGRAUGH: I don't think it matters whether she
13 drafted it, Judge. Again, if I asked --

14 THE COURT: Well, no, that's not my point. My point
15 has to do with your purpose for which you want to use it, and
16 your purpose for which you want to use it, your statement of
17 relevance, is related to, as you said, what you indicated in
18 your opening statement, and what I'm saying is if you take
19 what you said in your opening statement and compare that to
20 this offer of this document as a whole with these other things
21 on the back of the document as it was folded and if you
22 conclude that there is a possibility that it was one document
23 together and photocopied, that it may not necessarily be
24 relevant and consistent with your theory, and if it's not
25 relevant and consistent with your theory, if it's just kind of

1 out there, then why should it come in as evidence on behalf of
2 Defendant Mock?

3 MR. MCGRAUGH: For one, we're not offering the back
4 page of it, Judge, so whether that --

5 THE COURT: We're going to pick and choose what we're
6 going to offer from this one document; is that what you're
7 saying?

8 MR. MCGRAUGH: The only thing that was identified by
9 the officer was that front page, Judge. That's the only thing
10 that was identified as taken. The only specific thing he
11 identified was that front page, not the back page, Judge, so
12 that, you know, and --

13 THE COURT: Well, in identifying the front page,
14 doesn't he identify the back page as being the thing that he
15 took from the purse because, clearly, it was together; it's
16 folded. So if you identify the front page as being what was
17 in the purse, then you necessarily --

18 MR. MCGRAUGH: Well, what did --

19 THE COURT: -- excuse me -- you necessarily have to
20 identify the back page as what came from the purse because
21 it's one thing unless --

22 MR. MCGRAUGH: Well, what would --

23 THE COURT: -- unless you're suggesting that at some
24 point in time what was on the front page was drafted and
25 drafted and subsequently attached to the back page. I mean,

1 how can you reasonably argue that he didn't identify the front
2 page as coming from the purse when he identified -- or the
3 back page when he identified the front page since it's one
4 thing folded?

5 MR. MCGRAUGH: Can I answer that, Judge?

6 THE COURT: Yeah.

7 MR. MCGRAUGH: The reason is -- is that based on what
8 he read on the front page, he realized the importance of the
9 document, he realized the importance of the need to seize that
10 document, and, you know, it didn't matter, it's not relevant
11 what's on the back page.

12 THE COURT: That's not my point.

13 MR. MCGRAUGH: Well --

14 THE COURT: At this juncture, my point is you're
15 making an argument that seems to me incredibly specious when
16 you say that he didn't identify as part of the document what
17 was on the back page since it was all one.

18 MR. MCGRAUGH: No. And, Judge, all I'm saying is
19 that it was identified for that purpose, and that's all we
20 wanted to introduce into evidence -- the front page -- because
21 that's what's been identified, that's why the officer took the
22 action he did in seizing the evidence, and what's on the front
23 page is what we believe is directly relevant.

24 Now, what's on the back page -- that's why it's not
25 being offered. I'm not taking the position that it's not all

1 one document, but what I'm saying, Judge, is -- is that all
2 those arguments go to -- go to weight. They don't go to
3 admissibility. The admissibility of the document goes to
4 whether the characteristics of the -- of the document tend to
5 prove its authenticity, and it does, Your Honor, based on
6 that -- that -- the information contained on the front of --
7 on the front of that note.

8 THE COURT: You really want this in, huh?

9 MR. MCGRAUGH: Yes.

10 THE COURT: This is the fourth time I've asked this.

11 MR. MCGRAUGH: Yes.

12 THE COURT: All right. If I ask a fifth time, I'm
13 not responsible.

14 MR. MCGRAUGH: I understand.

15 THE COURT: All right. You sure you want this in?

16 MR. MCGRAUGH: I do.

17 THE COURT: Okay. Ms. Herndon, yes.

18 MR. DITTMIEIER: Judge, at that point, though, I would
19 interject and object to the back page being shown to the Jury
20 because the officer saw that front page and that's all that's
21 been identified. There's no foundation for anything else on
22 there, and I don't know that anybody disagrees with the back
23 page not being shown.

24 MR. MCGRAUGH: I don't, Your Honor.

25 THE COURT: That's a good thing because it's not --

1 because this is -- this back page belongs in some Hitchcock
2 movie, but it doesn't belong in this trial.

3 Fifth time -- you sure you want it in?

4 MR. MCGRAUGH: I want it in, Judge.

5 THE COURT: Okay. Over your objection, Ms. Herndon?

6 MS. HERNDON: Over my objection, Judge.

7 THE COURT: I'm going to let it in, although I have
8 to note for the record that it's not something that I would
9 offer. I'm just saying.

10 MR. MCGRAUGH: Okay. You can testify at my 2255
11 hearing, Judge.

12 THE COURT: Well --

13 MS. HERNDON: It's already on the record.

14 THE COURT: It's --

15 MR. MCGRAUGH: Judge --

16 THE COURT: It's all a matter of strategy. It
17 wouldn't be my strategy to do it because, you know, I just --
18 I always liked to make things way more difficult for myself in
19 different ways when I tried a lawsuit.

20 MR. MCGRAUGH: Judge, could I propose we mark the
21 envelope Exhibit D? Could we --

22 THE COURT: D1?

23 MR. MCGRAUGH: Could we make this Exhibit D1 for the
24 purposes of -- because we don't intend to offer the whole --

25 THE COURT: Got you. Okay. Yeah, do you have

1 another sticker?

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2 MR. MCGRAUGH: Yeah.

3 THE COURT: Okay. Now, here's the deal, though.

4 What are we going to do about this back page? If it's
5 published or if they ask for it and we're talking about giving
6 it to them, I mean, do we cut it off or what?

7 MR. DITTMAYER: Judge, if the parties agree, I don't
8 know why we couldn't --

9 THE COURT: Photocopy just the front?

10 MR. DITTMAYER: -- mark that, photocopy the part
11 that's going to go in, and just use that as an exhibit.

12 MS. HERNDON: Yeah, that's fine. I mean it's already
13 a photocopy. What's the harm of a photocopy of a photocopy?

14 THE COURT: And it could very well be the photocopy
15 of a photocopy of a photocopy --

16 MS. HERNDON: That's the problem with --

17 THE COURT: -- or some other photocopy, but you know.

18 MS. HERNDON: -- with Wite-Out used to change the
19 words.

20 THE COURT: Well, that was for the Hitchcock stuff on
21 the back, though, that they're not going to see. Here you go.

22 MR. MCGRAUGH: Do we want to make a copy of that,
23 Judge, and then mark the copy?

24 THE COURT: Good idea. Would you, Mindy? No
25 shadows, okay?

1 All right. Anything else on behalf of Defendant
2 Mock?

3 MR. MCGRAUGH: Nothing, Your Honor. Just introduce
4 that piece of evidence and publish it.

5 THE COURT: Okay. And then you guys will be ready,
6 Ms. Herndon?

7 MS. HERNDON: I don't know, Judge. We better take a
8 break and see, but can I say one more thing before we --

9 THE COURT: Yes.

10 MS. HERNDON: -- before we take a break? Could we
11 renew our motion for severance that we previously filed? I
12 think it's an appropriate and maybe even required thing to do
13 at the end of the Government's case, and I think especially in
14 light of the hearsay statements that came in against Ms. Young
15 that, in my legal opinion, would not have come in against
16 Ms. Young if she had been in trial by herself, and other
17 evidence such as the note the Court just admitted, which
18 obviously would not have come in if Ms. Young had been in
19 trial by herself. So for all of the reasons that we stated in
20 our original severance motion and based on all the evidence
21 that has come in here that would not have come in if Ms. Young
22 had been in trial by herself, we want to renew our severance
23 motion and ask the Court to grant that at this time.

24 THE COURT: All right. Mr. McGraugh.

25 MR. MCGRAUGH: It's probably a good time to join in

1 something like that, Judge, so it's kind of gone both ways,
2 you know.

3 THE COURT: All right. Defendant Young and Defendant
4 Mock's motions for severance are denied.

5 And as a commentary, on the last exhibit that was
6 admitted, I'm not so sure, Ms. Herndon, that your conclusion
7 is correct that that would not have come in had Ms. Young or
8 would not have been offered in the case of Young if she were
9 on trial by herself. That's kind of difficult to say at this
10 juncture. It could very well be that the Government might
11 have attempted to introduce that at that time, but that's just
12 a commentary.

13 MS. HERNDON: Well, and my response, Judge, would be
14 since Mr. Dittmeier said he didn't introduce it because he
15 couldn't identify it, then I doubt that he would have tried to
16 introduce it against Ms. Young when he can't identify it.

17 THE COURT: That's a good point.

18 MS. HERNDON: Thanks.

19 THE COURT: It is.

20 MR. DITTMIEIER: Judge, but I would agree with the
21 Court's analysis on that.

22 THE COURT: All right. Thank you, sir.

23 All right. You guys need some time to talk about
24 where we go from here?

25 MR. GORLA: We do, Judge.

1 THE COURT: All right. Ten minutes, Michael. All
2 right.

3 MR. DITTMIEIER: We've got ten?

4 THE COURT: Yes.

5 (Court recessed from 10:45 a.m. until 11:31 a.m.)

6 (The following proceedings were held within the hearing
7 and presence of the Jury.)

8 THE COURT: You may proceed, Mr. McGraugh.

9 MR. MCGRAUGH: Thank you, Your Honor. The Government
10 has called the witnesses that Defendant Mock would have called
11 to trial, so we have no witnesses to offer at this time
12 except, Your Honor, I would move for introduction of defense
13 DM1, which is an exhibit which was marked when Officer Berry
14 testified. This was the document identified by Officer Berry
15 that he turned over to the Missouri State Highway Patrol, and
16 so this would be the piece of evidence I would like to offer
17 at this time. I'd like to offer it into evidence.

18 THE COURT: Very well.

19 MS. HERNDON: Over our objection, Your Honor, as
20 previously stated.

21 THE COURT: Very well. Noted. Overruled. DM1?

22 MR. MCGRAUGH: DM1.

23 THE COURT: Is admitted.

24 MR. MCGRAUGH: And, Your Honor, I would just like to
25 publish this to the Jury.

1 THE COURT: Very well.

2 MR. MCGRAUGH: And that would conclude my evidence,
3 Your Honor. Defendant Mock would close her evidence.

4 THE COURT: All right. Mr. Gorla.

5 MR. GORLA: Judge, we have two witnesses to present.
6 Our first witness will be Jeff Dodson.

7 THE COURT: Very well. Step forward right here and
8 be sworn in by the clerk. Right here, sir.

9 JEFF DODSON,

10 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
11 FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. GORLA:

14 Q Will you state your name for the record, please?

15 A My name is Jeff Dodson.

16 Q And were you -- you're appearing today under subpoena, is
17 that correct, Mr. Dodson?

18 A Yes, sir, I am.

19 Q Okay. Where do you live?

20 A In Novinger, Missouri.

21 Q And what's your occupation?

22 A I am the Mayor of Novinger, and I pastor West Chariton
23 Fellowship Church.

24 O Okay. How long have you lived in the Novinger area?

25 A Thirty-four years.

1 Q Okay. So, obviously, you're familiar with the community,
2 is that correct?

3 A Very familiar.

4 Q Okay. Do you know a person by the name of Norman Newlin?

5 A Yes, sir, I do.

6 Q And does he live in Novinger?

7 A Yes, sir, he does.

8 Q How long has he lived there, do you know?

9 A Approximately 10 years.

10 Q Okay. Are you familiar with Mr. Newlin's reputation for
11 truthfulness or untruthfulness in the community?

12 A He's been known to be an untruthful person.

13 MR. GORLA: Okay. That's all I have, Judge.

14 THE COURT: Cross.

15 MR. DITTMAYER: Just briefly, Judge.

16 CROSS-EXAMINATION

17 BY MR. DITTMAYER:

18 Q Mr. Dodson, I take it on March the 23rd, 2006, you
19 weren't out at Kay Young's farm --

20 A Oh, no, sir.

21 Q -- when whatever happened?

22 A No, sir.

23 Q So you don't know anything about what happened there that
24 night?

25 A Absolutely not.

1 Q Okay. And in 2002 and early 2003, when Mr. Newlin was
2 living on Kay Young's farm, you wouldn't have been present for
3 any conversations the two of them had together?

4 A No, sir, and was not acquainted with him either.

5 MR. DITTMER: Okay. That's all. I have no further
6 questions. Thank you.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Anything else?

9 MR. MCGRAUGH: No questions, Your Honor.

10 MR. GORLA: No, Your Honor.

11 THE COURT: Thank you, sir. You're free to go.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 MS. HERNDON: Your Honor, our next witness will be
15 Gayle Craig.

16 THE COURT: Step up this way, ma'am, and be sworn in
17 by the clerk right here.

18 Proceed.

19 MS. HERNDON: Thank you, Judge.

20 GAYLE CRAIGG,

21 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
22 FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. HERNDON:

25 Q Ma'am, can you tell the Jury your name, please?

1 A Janet, but I go by Gayle Craigg.

2 Q And is "Gayle" your middle name?

3 A Yes.

4 Q Okay. Do you know Kay Young?

5 A I do.

6 Q How do you know Kay Young?

7 A She was my employer when I was teaching at the Callao C-8
8 school, and then I also worked for her in her kennel.

9 Q You worked for her in her kennel, did you say?

10 A Yes.

11 Q Okay. How long have you known Kay Young?

12 A Since 1999.

13 Q I'm going to ask you to -- you were familiar when her
14 husband Mel Griesbauer was killed, is that correct?

15 A Yes.

16 Q At some point after his death, did you come to her farm
17 to help take care of the dogs?

18 A Yes, I did.

19 Q Can you tell us when that was?

20 A The evening of the occurrence happened at 2:00 or 3:00 in
21 the morning. My husband and I came up that evening after I
22 finished teaching that day.

23 Q Okay. And did you in fact go into Ms. Young's kennel?

24 A Yes.

25 Q And take care of the dogs?

1 A Yes, I did.

2 Q Can you tell us how many dogs were in the kennel at the
3 time?

4 A This is a very good estimate, I would say. She had
5 several smaller dogs that she used for fillers in between
6 bulldog litters, but I would estimate 12 to 14 females, two
7 breeding males, and a couple of females with puppies in the
8 nursery side.

9 Q Okay. Let's start from the very beginning of your
10 answer. You said she had several smaller dogs?

11 A Right.

12 Q And those were not bulldogs?

13 A No.

14 Q Those were --

15 A Min Pins, Boston Terriers. I think there was some Pom,
16 Pomeranians.

17 Q Do you have an idea approximately how many dogs -- how
18 many of those smaller dogs there were?

19 A Six to eight.

20 Q Six to eight?

21 A Uh-huh.

22 Q Do you have an idea of what the value of those dogs, the
23 six to eight smaller dogs, was?

24 A Well, like everything else, it depends on the market, but
25 mostly, I would say 75 to 50 to 75, 100 dollars.

1 Q So 50 dollars per dog up to 100 dollars per dog on the
2 higher end?

3 A Right.

4 Q Okay. Now let's go past the smaller dogs. She also had
5 bulldogs, correct?

6 A Right.

7 Q And you separated that between full-grown dogs and
8 puppies?

9 A Right. Well, there were -- I can't remember the exact
10 number of puppies, but there were two litters, and I am
11 estimating 10 to 12 puppies.

12 Q Okay. So there were 10 to 12 bulldog puppies?

13 A Uh-huh.

14 Q And then how many of --

15 A Fourteen -- 12 to 14 adults.

16 Q Okay.

17 A Maybe 16.

18 Q Okay. And do you know the value of those dogs?

19 A I have seen them go as inexpensively as \$850. I've seen
20 them go as high as 3,500.

21 Q Okay. Thank you. Now, were you aware of whether some of
22 those dogs were male and some were female as far as the grown
23 dogs?

24 A Yes.

25 Q How many were male?

1 A There were two males.

2 Q And is there a significance as male versus female when it
3 comes to breeding dogs?

4 A Right. The males are more expensive.

5 Q Okay. And do the males have the ability to breed several
6 times?

7 A Oh, yeah, yeah.

8 Q Produce several litters?

9 A Right.

10 Q With different females?

11 A Right.

12 Q Thank you. Now, you said on the night that
13 Mr. Griesbauer was killed, 2:00 in the morning or so, and you
14 were up there by --

15 A 5:00.

16 Q 5:00 that night?

17 A Uh-huh.

18 Q When you got there to the farm, did you have a chance to
19 see Kay Young?

20 A We were directed from the farm to Kay's son's house
21 because they had not returned to the farm yet. The police
22 were still investigating the crime scene, so we were --
23 actually, the first contact that I had with her that evening
24 was at her son's house.

25 Q Okay. And approximately what time was that?

1 A 5:30.

2 Q Okay. So you went straight from the farm to her son's
3 house?

4 A Right.

5 Q Okay. And can you tell us physically what you observed
6 about Ms. Young when you saw her?

7 A Very ashen looking. Total state of shock. Slightly
8 communicative, not very much. Kind of a walking zombie.

9 Q Okay. I'm assuming then that you continued to support
10 Kay after her husband was killed?

11 A I did.

12 Q And did -- do you know whether she continued to stay
13 there at the farm that she lived on after he was killed?

14 A As long as there was someone with her.

15 Q And how were you involved in that process?

16 A Well, there were several of us that alternated nights
17 staying with her so she wouldn't be alone.

18 Q And what if someone was not able to stay with her?

19 A Then she would go to a friend's house in Kirksville.

20 Q And were there occasions where she would spend three or
21 four nights in a row with that friend --

22 A Right.

23 Q -- if no one could stay with her?

24 A Right.

25 Q How long did this go on, if you recall, where someone was

1 always with her?

2 A Several months.

3 Q Now let me take you back in time to when Mr. Griesbauer
4 was alive and he and Kay were married.

5 A Uh-huh.

6 Q Were you aware of when he was being deployed to Iraq?

7 A Yes, I was.

8 Q And did you attend a pre-deployment gathering with Kay
9 and Mel?

10 A I did.

11 Q And what was the purpose of that gathering?

12 A Mainly for final arrangements for the soldiers so they
13 could do their power of attorneys, their life insurances, all
14 legal things that needed to be taken care of prior to their
15 deployment.

16 Q And were there a large number of soldiers getting ready
17 to deploy who were there?

18 A Yes. His whole group.

19 Q And what did you witness happening while you were there?

20 A I saw a lot of people, you know, going up and making
21 their final paperwork, getting their paperwork notarized for
22 their insurance policies, their power of attorneys, you know,
23 their wills.

24 Q And was -- was the service to assign someone to be your
25 power of attorney available that day? You could do it there?

1 A Yes, yes.

2 Q And could you have purchased insurance there that day?

3 A Yes.

4 Q And did you witness Mel and/or Kay purchase insurance
5 that day?

6 A Mel. Well, I didn't -- I wasn't standing right beside
7 him, but I saw him at the station, and I was told that he
8 had --

9 Q Okay. That's all.

10 A -- signed up for it.

11 MS. HERNDON: All right. Thank you, ma'am. I don't
12 have any other questions.

13 THE COURT: Mr. Dittmeier.

14 MR. DITTMIEIER: Yes.

15 CROSS-EXAMINATION

16 BY MR. DITTMIEIER:

17 Q Ms. Craigg, I've only got a few questions for you, okay?

18 A That's fine.

19 Q You were good friends with both Mel Griesbauer and Kay
20 Young, is that correct?

21 A Yes.

22 Q And I believe at some point -- well, I'll ask you. They
23 started dating in the fall of 2003; is that about right?

24 A Yeah. I think, yeah. I have to go back too many years.

25 Q Okay. I know you've given statements to people several

1 times.

2 A Yeah, yeah.

3 Q Does that sound about right to you?

4 A That's right, uh-huh.

5 Q And were you aware when they got married September the
6 5th of 2004?

7 A Yes.

8 Q Okay. And then he was deployed. What you're talking
9 about -- he was deployed shortly after that?

10 A Right, right.

11 Q And then he was gone approximately a year, is that
12 correct?

13 A He came back early. He came back in December, I think.
14 He was supposed to be gone a year, and he -- but he came back
15 early. Gosh, I can't remember.

16 Q That's okay if you don't remember.

17 A I don't.

18 Q We've got the dates. I'm just asking you what -- what
19 you recall. That's fine. He was gone, though, during the
20 summer of '05, is that correct?

21 A Yes, yes.

22 Q And you were out at the farm?

23 A Yes.

24 Q And Ms. Young -- you were out there on the farm helping
25 her?

1 A Yes.

2 Q And Ms. Young was familiar with guns, wasn't she?

3 A Yes. We all are. We're farm wives.

4 Q And in fact, you said in the past that she would use a
5 gun to shoot stray dogs with it from time to time?

6 A Yes.

7 MR. DITTMER: I have no further questions of this
8 witness.

9 THE COURT: Mr. McGraugh.

10 MR. MCGRAUGH: Just briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MCGRAUGH:

13 Q Ms. Craigg, my name's Chris McGraugh. I represent Kathy
14 Mock. I just have a few questions for you.

15 A Okay.

16 Q Mr. Dittmeier just asked you about the guns on the
17 property of Ms. Young and Mr. Griesbauer. Do you remember
18 that?

19 A Yeah.

20 Q And do you recall specifically a .30-30 Winchester type
21 of lever action rifle?

22 A No, sir, I don't.

23 Q Okay. There's mention in some of the reports that we
24 have of your contact with law enforcement talking about a
25 traveler, a gun that was a traveler, meaning it was carried

1 around the property quite a bit. Do you recall that?

60

2 A I -- I knew they had weapons. I knew that there were
3 guns available for varmint control, so on and so forth, but
4 I've never heard it referred to as a traveler.

5 Q Do you recall speaking with law enforcement August 1st of
6 2006, speaking with a Lieutenant Platte from the Missouri
7 State Highway Patrol?

8 A Yes, sir.

9 Q Okay. Had you had an opportunity to look over the many
10 police reports that are attributed to your statements?

11 A No, sir.

12 Q I'm going to mark this police report EM and ask you if --
13 whether this report refreshes your memory about what you told
14 the officer then, okay?

15 A Okay.

16 MR. MCGRAUGH: May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 MR. MCGRAUGH: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 MR. MCGRAUGH: I'm sorry. Do you --

23 MS. HERNDON: I don't know where you even are.

24 MR. MCGRAUGH: It's the second interview, August 1st,
25 2006. It's on page 2.

1 Q (By Mr. McGraugh) Ms. Craigg, I just want to show you
2 what's been marked Defendants EM and refer you to the second
3 page of the -- of the report. It appears it was a question
4 and answer between you and Lieutenant Platte, and just as to
5 the first question --

6 A Oh, okay.

7 Q -- does that refresh your recollection?

8 A It's been way too many years, but --

9 Q I know it has.

10 A Okay.

11 Q Does that refresh your recollection a little bit?

12 A Okay. All right.

13 Q And so this weapon that you referred to -- do you recall
14 referring to this weapon as a traveler?

15 A No, I really don't.

16 Q Okay. Is -- as you noted in the report that -- that Kay
17 and Mel would carry in the pasture; the gun was in the
18 pasture; wherever they went, the gun was?

19 A Well, as needed, yes.

20 Q Okay. Do you recall that?

21 A Yes.

22 Q Okay. And do you recall telling the officers that?

23 A Yes, I do remember that.

24 Q Okay. And that's what you were referring to, meaning the
25 gun was a traveler, I guess?

1 A I guess.

2 Q Okay. All right. And you spent quite a bit of time at
3 Ms. Young's property?

4 A I have.

5 Q And did you -- Ms. Young had a number of pharmaceuticals,
6 drugs that are --

7 MS. HERNDON: Judge, I'm going to object to the
8 relevance of this. It's beyond the scope of direct
9 examination. I don't know where he's going, but it doesn't --
10 I can't imagine how it's relevant.

11 MR. MCGRAUGH: Well, we've heard a lot about drugs
12 and --

13 MS. HERNDON: Judge, we should probably approach.

14 THE COURT: Yeah, I think so.

15 (A bench conference was held on the record and outside of
16 the hearing of the Jury as follows:)

17 MS. HERNDON: First of all, it's beyond the scope of
18 my direct examination with her, so it's improper. Second of
19 all, I don't -- it's not relevant.

20 MR. MCGRAUGH: I don't think I'm bound by what --
21 they put a witness up. Except if it was the Defendant, I'm
22 not bound by what's asked in the direct examination, and so
23 the fact that it's outside the scope of her direct examination
24 is not -- I don't think is a redressable objection. The -- as
25 to what I'm getting at is -- is that there's been a lot of

1 discussions in this as to that my client was given a bag of
2 pills, and where these pills came from, there's been evidence
3 of that, and I just want to establish with this witness that
4 Kay Young had a number of pharmaceutical drugs at her
5 residence.

6 MS. HERNDON: I don't have anything else to say. I
7 mean if that's all he's going to establish, I don't have
8 anything else, any other complaints other than I don't think
9 he can go beyond -- whenever I try to go beyond the scope of
10 what the prosecutor asked somebody on direct, then I'm told I
11 can't do it, so it seems like he should be told he can't do
12 it.

13 THE COURT: I never told you that.

14 MS. HERNDON: You didn't, but a lot of other judges
15 have told me that.

16 THE COURT: It's a matter of perspective.

17 MS. HERNDON: There you go.

18 THE COURT: Okay.

19 MR. MCGRAUGH: That's all I'm going to ask, Judge.

20 THE COURT: All right.

21 MS. HERNDON: Okay.

22 (The following proceedings were held within the hearing
23 of the Jury.)

24 THE COURT: Proceed.

25 MR. MCGRAUGH: Thank you, Your Honor.

1 Q (By Mr. McGraugh) Ms. Gayle, I was asking you, at the
2 time that you had spent at Ms. Young's residence over the
3 years, did you note that she had quantities of pharmaceuticals
4 at her house, drugs at her house?

5 A She had prescription medications, yes.

6 Q Okay. And did you describe at one time like she was a
7 walking pharmacy?

8 A Between the -- the prescriptions and the natural
9 supplements that she took, there was a lot of pills, yes.

10 MR. MCGRAGH: Okay. Thank you, ma'am. That's all
11 the questions I have.

12 THE COURT: Anything else, Mr. Dittmeier?

13 MR. DITTMER: I have nothing further, Judge.

14 THE COURT: Anything else?

15 MS. HERNDON: I don't have anything further. Thank
16 you.

17 THE COURT: All right. Thank you, ma'am. You're
18 free to go.

19 Call your next witness.

20 MS. HERNDON: Your Honor, can we approach to talk
21 about our final --

22 THE COURT: Certainly.

23 MS. HERNDON: -- submission?

24 (A bench conference was held on the record and outside of
25 the hearing of the Jury as follows:)

1 THE COURT: Yes, ma'am.

2 MS. HERNDON: The other thing that we have to do is
3 to admit Jim Goodwin's medical records into evidence, and I
4 understand the Government has an objection to it, so I wanted
5 to let you know what we want to do and let them say what they
6 want to say.

7 THE COURT: Is that the guy from Iowa?

8 MS. HERNDON: It's the guy from Iowa who says he took
9 the two blue pills and had a bad reaction and went to the
10 emergency room, and we have, provided by the Government, his
11 medical records from that admission to the emergency room that
12 night where he doesn't tell anybody that he took two blue
13 pills. He tells about all the medications he's on and took
14 and doesn't make any reference to taking two blue pills or
15 anything else out of the ordinary, so I think they're
16 admissible to impeach his credibility on that.

17 MR. DITTMER: Judge, my objection -- and there is
18 no objection to the authenticity of the records. My objection
19 is there's no relevance and there was no foundation laid to
20 put them in to make them relevant. I was very careful. This
21 was one of the items that came up in 404(b), and I indicated I
22 was putting this witness on and I was never going to ask him
23 about any attempt to kill him or about him going to the
24 hospital.

25 THE COURT: Uh-huh.

1 MR. DITTMIEIER: I asked him if she had given him two
2 pills on direct. He said she had. My purpose in doing that
3 is because there are allegations that pills were given to
4 Mrs. Mock. It wasn't until Ms. Herndon got up that she asked
5 him, "Didn't you go to the hospital on October 17th and 18th?"
6 And he said, "Yes." Even then, he never said it was as a
7 result of the pills. He never said he told the people at the
8 hospital it was a result of the pills. So I don't think this
9 is relevant. She put the dates in that he went to the
10 hospital. She interjected it, so I don't see that this -- he
11 has not denied anything in there. I don't think it's
12 relevant.

13 MS. HERNDON: Well, Judge, here's the problem,
14 though. When they first -- when they first submitted this
15 404(b) evidence to us, they said, "We're going to introduce
16 evidence that she knew that Jim Goodwin had a heart problem
17 and she gave him Viagra as an attempt to kill him," and that
18 what they wanted to try to show was that she was put on his --
19 a beneficiary on his life insurance policy before she gave him
20 the Viagra. Well, that didn't work out because it wasn't
21 true. So then they want to backtrack and say, "Oh, well,
22 since we can't prove that, we just want to put him on to show
23 this little slice of she gave him the two pills and not tell
24 the whole story," and when Mr. Dittmeier got back up on
25 redirect, he specifically asked him, "You went to the hospital

1 because you had a reaction, a bad reaction, to these two blue
2 pills?" And so I mean I have to be able to -- you can't just
3 put a little tiny piece of that in. I have to be able to
4 explain that whole situation, and there has been a foundation
5 laid for it because he has said that this is why he went.

6 MR. DITTMER: Your Honor, what -- first of all, we
7 made that decision before trial that we weren't going to get
8 into this, so it doesn't matter what we got these records for
9 initially. Ms. Herndon asked him if he went to the hospital
10 on October 17th and 18th, and he said yes. The evidence is in
11 on the insurance that it was October the 23rd that the
12 insurance was -- so it's in front of the Jury that he went to
13 the hospital before that beneficiary statement was ever
14 signed. So the purpose she -- it's already into evidence.
15 There's nothing that this adds to relevance. He's responded
16 truthfully to her that he went in October 17th and 18th. The
17 Government has an exhibit, and it shows that the beneficiary
18 is signed October 23rd, so --

19 MS. HERNDON: But these impeach his credibility. I
20 don't -- he -- she never gave him -- she never gave him these
21 blue pills, and if she had given them to him and he was having
22 a reaction to them and went to the hospital, why didn't he say
23 it? And so this goes to impeach his credibility on the
24 testimony that she ever gave these to him.

25 MR. DITTMER: But he was never asked if he told

1 them, so this doesn't impeach that.

2 THE COURT: And that's the problem that I have with
3 using these records for impeachment purposes. There's nothing
4 through his testimony, either direct or in cross, that
5 indicates that the purpose for which he went to the hospital
6 was related to the pills or not, and Mr. Dittmeier is correct;
7 he admitted everything that there was to admit on the inquiry.
8 He didn't deny anything on the inquiry, so how can you impeach
9 him with something that isn't an issue?

10 MS. HERNDON: Well, because it's --

11 THE COURT: Well, and as I understand your argument,
12 your argument is for impeaching him, in essence, that he never
13 said that he went to the hospital and either told them or
14 didn't tell them about the pills and so, therefore, I'm going
15 to put on the medical records from the dates that he said he
16 went to the hospital to show that the medical records are
17 absent of any statement by him that he took some medication,
18 the blue pill medication.

19 MS. HERNDON: But he did say that he went to the
20 hospital because he had an adverse reaction to these. He did
21 say that.

22 THE COURT: I don't think so, Jennifer. You're going
23 to make me look this up, aren't you?

24 MS. HERNDON: Well, I mean, because if he didn't say
25 that, then I screwed up and that would be a bad thing,

1 wouldn't it?

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2 THE COURT: Well, why don't we do this; why don't we
3 let them go to lunch; I'll have Gayle look through the
4 transcript or I'll go through it. I'll have Gayle look
5 through the transcript, and I'll look through my notes on his
6 testimony and find that out, so I'll make a ruling when we
7 come back from lunch, and if we assume -- either way the
8 ruling goes, is there anything else that you guys are planning
9 to put on?

10 MS. HERNDON: No, huh-uh, no, no.

11 THE COURT: Is there anything that you guys plan on
12 putting on?

13 MR. MCGRAUGH: No, Judge, but we assume you want to
14 make a record on the Defendants not testifying in the case,
15 and when did you want to do that?

16 THE COURT: Well, we could do that when we break for
17 lunch.

18 MS. HERNDON: That's fine. Yeah, that's fine.

19 THE COURT: All right.

20 MS. HERNDON: And I think it was -- it was either
21 when I questioned him or when Mr. Dittmeier did redirect was
22 in my notes.

23 THE COURT: All right. And the other thing is -- is
24 it likely that we'd be able to submit this to the Jury today?

25 MS. HERNDON: No.

1 MR. DITTMIEIER: Judge, we've all talked. I mean, I
2 guess if everybody crunched, but we all thought -- we've made
3 tremendous time. We thought we'd all prefer to argue the case
4 Monday morning.

5 THE COURT: Monday morning.

6 MR. GORLA: And the instructions this afternoon, get
7 everything out of the way.

8 THE COURT: And do the instruction stuff this
9 afternoon, get that all done. That makes sense. Okay. We'll
10 do it that way. All right.

11 MR. MCGRAUGH: Thanks, Judge.

12 (The following proceedings were held within the hearing
13 of the Jury.)

14 THE COURT: Ladies and gentlemen, we're going to
15 recess for lunch at this time. During the course of the
16 luncheon recess, do not discuss the case amongst yourselves or
17 with anyone else. Do not allow anyone to discuss it within
18 your hearing or presence. Do not form or express any opinions
19 about the case until it is given to you to decide. Do not
20 utilize any web-based social networking sites. If you want to
21 take a little longer lunch today and reconvene at 1:30, okay,
22 so we'll see you back from lunch at 1:30.

23 THE CLERK: All rise.

24 THE COURT: Counsel, stick around and we'll do now
25 what we talked about.

1 (Court recessed from 12:04 p.m. until 12:15 p.m.)

2 (The following proceedings were held outside the hearing
3 and presence of the Jury.)

4 THE COURT: All right. Gang, listen up. These are
5 the pertinent parts of Mr. Goodwin's testimony.

6 You ready, Gayle?

7 COURT REPORTER: Yes.

8 THE COURT: Go ahead. Read away.

9 (The court reporter read back the following portions of
10 the testimony of James R. Goodwin from Volume 4:)

11 READING FROM CROSS-EXAMINATION BY MS. HERNDON:

12 Q Now, you told Mr. Dittmeier that at some point in October
13 Ms. Young gave you two blue pills, is that correct?

14 A Yes.

15 Q And that happened on two separate occasions, correct?

16 A Yes.

17 Q And the two occasions that she gave you those pills were
18 October 17th and October 18th, according to your testimony,
19 correct?

20 A Yes.

21 Q But she never told you what those were?

22 A No.

23 Q And right around this time, October 17th, October 18th,
24 you ended up in the emergency room, correct?

25 A Yes, I did.

1 Q And you were diagnosed as having dizziness, heart
2 problems, and hyperglycemia, correct?

3 A Yes.

4 READING FROM REDIRECT EXAMINATION BY MR. DITTMER:

5 Q Ms. Herndon asked you about when you took those little
6 blue pills --

7 A Yes.

8 Q -- that she gave you? And then she asked you about
9 having a reaction and going into the hospital?

10 A Yes.

11 Q Did you have the reaction after you took the pills?

12 A Yes.

13 Q And you took them twice?

14 A Yes.

15 Q And both times, there was a reaction?

16 A Yes.

17 Q Okay. But that's -- that's all; you just had a reaction
18 and went to the hospital and you were okay?

19 A I don't recall anything that happened during that time,
20 but, yes.

21 MR. DITTMER: Okay. All right.

22 READING FROM DIRECT EXAMINATION BY MR. DITTMER:

23 Q Do you know approximately how much this insurance policy
24 was for?

25 A 60,000.

1 Q 60,000. Okay. Now, that was October 23rd, '06. In the
2 month of October of that year, did Ms. Young have occasion to
3 give you any pills?

4 A Yes.

5 Q And what did she give you the pills for?

6 A So I could get an erection.

7 Q But she gave you the pills?

8 A Yes.

9 (End of reading back testimony from Volume 4.)

10 THE COURT: So that is the entirety of the testimony
11 regarding the blue pills, direct, cross, and redirect.

12 Ms. Herndon.

13 MS. HERNDON: You know, it is what it is, Judge. I
14 don't have anything else to add to what I said to you at the
15 bench.

16 THE COURT: All right. Mr. Dittmeier.

17 MR. DITTMIEIER: It should be noted I didn't even say
18 blue. It was as innocuous as I could make it.

19 MS. HERNDON: So noted.

20 MR. CURRAN: But you know the significance --

21 THE COURT: That's what I was going to say.

22 MR. CURRAN: But you know the significance of the
23 blue pills.

24 THE COURT: All right. Based on the rereading of the
25 record, Ms. Herndon, I don't see that there's a basis for the

1 impeachment testimony with those records.

2 MS. HERNDON: Okay.

3 THE COURT: So your request will be denied.

4 MS. HERNDON: Thank you, Judge.

5 THE COURT: Do you want to make the record on the
6 testimonial aspects of your client or lack thereof?

7 MS. HERNDON: Whenever you're ready?

8 THE COURT: I'm ready. Let's proceed.

9 MR. CURRAN: And which do you want us to -- how do
10 we --

11 THE COURT: You can just do it from where you are or
12 from the podium anyway.

13 MR. CURRAN: Ms. Mock.

14 THE COURT: Have Ms. Mock come up to the podium.

15 Yes, Mr. Curran.

16 MR. CURRAN: Your Honor, I've discussed and actually
17 co-counsel and I have discussed with Ms. Mock her right to
18 testify. Obviously, these discussions began well before the
19 trial, you know, as the case was ongoing, and it's also been
20 set for trial twice before. I discussed that she had a right
21 to testify. I told her that that was -- that decision was
22 entirely up to her and if she wanted to testify we'd put her
23 on and we would prepare her and we would question her if
24 that's what she so chose to do, and I also told her that we
25 wouldn't really need to have the decision until we got to this

1 point when it got to our case, so we gave her all week to
2 watch the evidence, although we did have discussions from time
3 to time. She's decided after discussions with me that she
4 elects not to exercise her right to testify, Judge.

5 THE COURT: All right. Very well. Swear in the
6 Defendant.

7 (Defendant Katherine A. Mock sworn by the clerk.)

8 EXAMINATION

9 BY THE COURT:

10 Q Ms. Mock, did you hear the statement that your attorney
11 just made?

12 A Yes, sir.

13 Q All right. And do you have any questions regarding
14 anything he just said?

15 A No.

16 Q All right. And you have been sitting here the entirety
17 of this week during the course of the trial, correct?

18 A Yes.

19 Q All right. And you heard all the testimony that came
20 from those witnesses that were presented by the Government,
21 correct?

22 A Yes.

23 Q All right. And you had occasion to observe your
24 attorneys, Mr. Curran and Mr. McGraugh, engage in the
25 cross-examination of each and every witness that testified,

1 correct?

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2 A Yes.

3 Q All right. And before this, you'd discussed the
4 possibility or lack thereafter of testifying in the case,
5 right?

6 A Yes.

7 Q And you understand that it's your constitutional right to
8 testify if you want to testify. It's also your constitutional
9 right to not testify if you don't want to testify. You
10 understand that?

11 A Yes, I do.

12 Q All right. And you understand further that if you don't
13 testify, nobody can use the fact that you didn't testify
14 against you for any purpose; do you understand that?

15 A Yes.

16 Q All right. Do you also understand that if you do
17 testify, well, sometimes that can be a double-edged sword?

18 A Yes.

19 Q Sometimes it can help you. Sometimes it can hurt you.
20 There are times where it won't make any difference one way or
21 another. You'll just get an opportunity to speak your peace,
22 if you will. Do you understand that?

23 A I understand.

24 Q Okay. So you've had the full range of experiences with
25 regard to making the decision on whether you want to testify

1 or not?

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2 A Yes, I do.

3 Q And in light of all those experiences and in light of the
4 discussions that you've had with Mr. Curran and Mr. McGraugh
5 and knowing what you know about the evidence that has been
6 presented thus far -- the Government has now rested -- what's
7 your decision on whether you want to testify or not?

8 A I do not want to testify.

9 Q Okay. Do you have any questions about that at all at
10 this time?

11 A No, I do not.

12 Q Is there anything that is confusing to you at this time
13 that might affect on your decision to testify or not testify?

14 A No.

15 Q All right. Do you have any questions of me about that?

16 A No.

17 Q All right. Or anything that might be connected with it?

18 A No, sir.

19 Q All right. Thank you, Ms. Mock.

20 A Thank you.

21 THE COURT: Thank you, Mr. Curran, Mr. McGraugh.

22 Mr. Gorla, Ms. Herndon.

23 MS. HERNDON: Ready?

24 THE COURT: Ms. Herndon.

25 MS. HERNDON: Judge, I -- obviously, Mr. Gorla and I

1 and Ms. Smith when she was Ms. Young's attorney months ago
2 have all talked with Ms. Young about her right to testify or
3 not testify and the considerations that go into that. I have
4 advised her -- Mr. Gorla and I have advised her that we think
5 that she should not testify. I believe that she understands
6 her options. Obviously, you know her educational level; she's
7 able to understand the choices like this, and she's made the
8 decision not to testify.

9 THE COURT: Swear in the Defendant.

10 (Defendant Elain Kay Young sworn by the clerk.)

11 EXAMINATION

12 BY THE COURT:

13 Q Ms. Young, did you hear everything that Ms. Herndon said?

14 A Yes.

15 Q Is there anything that you wish to now dispute about what
16 she said?

17 A No.

18 Q All right. During the course of the pendency of this
19 case and as she indicated from the time that you had Ms. Smith
20 up to the time that you got Ms. Herndon and Mr. Gorla and up
21 to today, you've had the opportunity to contemplate as well as
22 discuss with your attorneys the proprieties of testifying or
23 not testifying in the case, have you not?

24 A Yes.

25 Q All right. And you've been here all week long and had

1 occasion, as I asked Ms. Mock, to see and hear the witnesses
2 that were presented and their testimony, correct?

3 A (Nods head up and down.)

4 Q All right. And I would also assume in light of what
5 Ms. Herndon said that during that time you may have had one or
6 more discussions about whether you might testify or not
7 testify when it came to that time?

8 A Yes.

9 Q All right. Generally speaking, do you have any questions
10 of me regarding the issue of whether you should testify or not
11 testify or your right in general to testify?

12 A No.

13 Q All right. You understand that if you don't testify in
14 the case it can't be used against you by anybody for any
15 purpose?

16 A Yes.

17 Q Do you understand if you do testify, though, it could
18 help you; it could hurt you; the fact that you did testify
19 could be used because then comments can be made about your
20 credibility in relation to the other witnesses; do you
21 understand that?

22 A Yes.

23 Q All right. With all that in mind, what do you want to do
24 at this point in time?

25 A I won't testify.

1 Q All right. Any questions at all about that in your mind? 80

2 A No.

3 THE COURT: All right. Very well. Thank you. Thank
4 you, Ms. Herndon.

5 MS. HERNDON: Thank you, Judge.

6 THE COURT: All right. So other than the medical
7 records, Ms. Herndon, is there going to be any further
8 evidence from the defense.

9 MS. HERNDON: We're finished, Your Honor.

10 THE COURT: Anything further from the Defendant Mock?

11 MR. MCGRAUGH: No, Your Honor.

12 THE COURT: So when we come back at lunch, you need
13 to formally announce, Ms. Herndon, Mr. Gorla, that the Young
14 defense rests.

15 MR. GORLA: The defense never rests, Judge.

16 THE COURT: Well, that's -- isn't there a book about
17 that?

18 MR. GORLA: Absolutely.

19 THE COURT: It was one of my favorite books in law
20 school. I read it five times. I did. All right. So,
21 logically then, after that, as we discussed at sidebar, I
22 guess we'll recess for the day, let the Jury go home, put our
23 instructions together. We should be able to -- I would hope
24 we should be able to get them all together and have our
25 instruction conference so that when we leave here this evening

1 and come back in Monday morning we'll be ready to go straight
2 out of the box with instructions and arguments, right? Okay.

3 At this point in time, Mr. Gorla and Ms. Herndon, are there
4 any instructions in particular that you intend to offer?

5 MR. GORLA: Judge, we're going to get together with
6 Mr. Curran and Mr. McGraugh --

7 THE COURT: Okay.

8 MR. GORLA: -- you know, and kind of go over that.

9 THE COURT: Okay.

10 MR. GORLA: Obviously, there's a few that we need to
11 have.

12 THE COURT: All right.

13 MR. GORLA: It's probably -- you know, there are
14 probably ones that we both would like.

15 THE COURT: Okay.

16 MR. CURRAN: I think at the most there will be a
17 couple, Judge. I really have to refresh what the Government
18 submitted.

19 THE COURT: Okay.

20 MR. CURRAN: We're going to look at it over the noon
21 hour.

22 THE COURT: We can put all that together, you know,
23 when we get back. Okay.

24 MR. CURRAN: Yeah, and I'll bring the book back over
25 if that's all right.

1 THE COURT: All right. Sure.

2 MR. DITTMIEIER: Judge, after we come back, I think we
3 should go through all the exhibits and make sure we agree on
4 what's -- what's been --

5 THE COURT: What's been in?

6 MR. DITTMIEIER: -- offered and accepted.

7 THE COURT: Okay. And also then we need to make --
8 consider any motions that might be provided, so we'll do all
9 of that after the Jury is cut lose for the day, and we'll make
10 all our record on those things then. Okay. See you back at
11 1:30. Is that what time I told them? Okay. All right.

12 (Court recessed for lunch from 12:32 p.m. until 1:46p.m.)

13 (The following proceedings were held within the hearing
14 and presence of the Jury.)

15 THE COURT: Mr. Gorla.

16 MR. GORLA: Judge, the defense on behalf of Ms. Young
17 rests.

18 THE COURT: Very well. Anything further on behalf of
19 the defense in behalf of Defendant Mock?

20 MR. CURRAN: No, Judge.

21 THE COURT: Any rebuttal on behalf of the Government?

22 MR. DITTMIEIER: No, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, it is a
24 quarter 'til 2:00. All the evidence has been presented. The
25 next thing that typically occurs is instructions and argument

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1 of counsel, all right, which in and of itself does not -- goes
2 pretty smoothly. It's the things that we have to do before
3 that that will take up some time, and that's getting the
4 instructions together, what I have to do to get the
5 instructions together that we try to anticipate what it's
6 going to be like to save some time, but even when you do that,
7 it still requires a lot of time. I could have you wait and
8 see if we're going to get to that point so that we can argue
9 the case to you, which is going to require a long time to do,
10 and there's no guarantee that we would actually get to that
11 point today. So with that in mind, rather than have you wait
12 around and waste your time and not have any assurances that
13 we'll be able to get to that point today, what we're going to
14 do is we're going to recess for the day, and we will reconvene
15 Monday morning at 9:30, have you folks come back, and we
16 should have everything together at that time. Now, you know,
17 while you folks are gone, we're going to be working on the
18 instructions to have all that together so that when you come
19 in Monday morning we can proceed straight out of the box.
20 Okay.

21 So the admonition that has been given to you
22 throughout the week is -- I will give to you again, which is
23 especially more significant and important now. Do not discuss
24 the case amongst yourselves or with anyone else. Do not allow
25 anyone to discuss it within your hearing or presence. Do not

1 form or express any opinions about the case until it is given
2 to you to decide. Do not read, view, or listen to any media
3 accounts regarding the trial, and that includes not reading,
4 viewing, or listening to any media accounts over the Internet
5 regarding the trial. Do not utilize any Internet websites
6 that are social networking in nature or any other aspect of
7 the Internet to discuss the case or, perhaps, inadvertently
8 come upon discussions about the case, and we'll see you Monday
9 morning at 9:30 then. Okay. All right. Thank you, folks.

10 (The following proceedings were held outside the hearing
11 and presence of the Jury.)

12 THE COURT: Okay. So motions.

13 MR. MCGRAUGH: Judge, we would move for judgment of
14 acquittal at the close of all the evidence. We would ask
15 based on the same grounds that we moved this morning on the
16 motion for a directed verdict at the close of the Government's
17 case.

18 THE COURT: Mr. Gorla.

19 MR. GORLA: On behalf of Ms. Young, Judge, I would
20 also like to move for judgment of acquittal at the close of
21 all the evidence both as to Count I and Count II for all the
22 reasons previously stated at the time we filed our motion for
23 judgment of acquittal at the close of the Government's case.

24 THE COURT: Mr. Dittmeier.

25 MR. DITTMIEIER: Judge, I would submit that we have

1 submitted the evidence and the evidence is sufficient.

2 THE COURT: All right. Any further arguments on the
3 motion?

4 MR. GORLA: Yes, Your Honor.

5 MR. MCGRAUGH: None Your Honor.

6 MR. GORLA: I'm sorry. No.

7 THE COURT: All right. As to Defendant Mock's motion
8 for judgment of acquittal at the close of all the evidence,
9 the motion will be denied. The evidence presented is
10 sufficient to allow the case to be submitted to the Jury for
11 their consideration. As to Defendant Young's motion for
12 judgment of acquittal at the close of all the evidence, that
13 motion will likewise be denied for the same reasons.

14 All right. Instructions. I guess we don't need this
15 on the record, Gayle.

16 (Court adjourned at 1:51 p.m.).

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 85 inclusive.

Dated at St. Louis, Missouri, this 6th day of August, 2012.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter